



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA-2023-0122]

RIN 2126-AC61

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes amendments to its Hazardous Materials Safety Permits (HMSPs) regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route-controlled quantities (HRCQs) of radioactive material (RAM). The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. Currently, the regulations reference the April 1, 2022, edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2023, edition.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2023-0122 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2023-0122/document>. Follow the online instructions for submitting comments.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-1812. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

FOR FURTHER INFORMATION CONTACT: José Cestero, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-5541, jose.cestero@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA-2023-0122), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2023-0122/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2023-0122/document> and choose the document to review. To view comments, click this NPRM, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>, the comments are searchable by the name of the submitter.

II. Executive Summary

This NPRM proposes to update an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2022, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” The CVSA handbook contains inspection procedures and OOSC for inspections of shipments of transuranic waste and HRCQs of RAM. The OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA’s State

partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Safety, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Compliance Division) at (202) 366-1812. The document may be purchased from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, (301) 830-6143, www.cvsa.org.

In this NPRM, FMCSA proposes to incorporate by reference the April 1, 2023, edition of the handbook. This NPRM will discuss all updates to the currently incorporated 2022 edition of the handbook.

Nine updates distinguish the April 1, 2023, handbook edition from the 2022 edition. The incorporation by reference of the 2023 edition does not impose new regulatory requirements.

III. Abbreviations

CDL	Commercial Driver's License
CFR	Code of Federal Regulations
CVSA	Commercial Vehicle Safety Alliance
DOT	Department of Transportation
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
HMSP	Hazardous Materials Safety Permit
HRCQ	Highway Route-Controlled Quantity
MCMIS	Motor Carrier Management Information System
OOS	Out-of-Service
OOSC	Out-of-Service Criteria
RAM	Radioactive Material
RODS	Record of Duty Status
RFA	Regulatory Flexibility Act
UMRA	The Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

IV. Legal Basis

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous

material, and 49 U.S.C. 5109, relating to motor carrier safety permits (hereinafter “HMSPs”), the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on HMSPs. The FMCSA Administrator has been delegated authority under 49 U.S.C. 113(f) and 49 Code of Federal Regulations (CFR) 1.87(d)(2) to carry out the functions vested in the Secretary of Transportation related to HMSPs. Consistent with that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E to address the congressional mandate on HMSPs. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this notice is applicable.

V. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and HRCQs of RAM. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” As of January 1, 2005, all vehicles and carriers transporting HRCQs of RAM are regulated by the U.S. Department of Transportation. All HRCQs of RAM must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All highway route controlled quantities of RAM shipments entering the United States must also pass

the North American Standard Level VI Inspection either at the shipment's point of origin or when the shipment enters the United States.

49 CFR 385.415 prescribes operational requirements for motor carriers transporting hazardous materials for which a HMSP is required. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a HRCQ of a Class 7 (radioactive) material, in accordance with the requirements of CVSA's handbook titled "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403."

According to 2019-2022 data from FMCSA's Motor Carrier Management Information System (MCMIS), approximately 3 million Level I through Level VI inspections were performed annually. Nearly 96.3 percent of these were Level I,¹ Level II,² and Level III³ inspections. During the same period, an average of 756 Level VI inspections were performed annually, comprising only 0.03 percent of all inspections. On average, OOS violations were cited in only 6 Level VI inspections annually (0.8 percent), whereas on average, OOS violations were cited in 233,259 Level I inspections (26 percent), 264,926 Level II inspections (26 percent), and 57,990 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

¹ Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

² Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

³ Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

The changes to the 2023 edition of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2023 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections.

VI. Discussion of Proposed Rulemaking

Section 385.4(b)(1), as amended on December 22, 2022 (87 FR 78579), references the April 1, 2022, edition of the CVSA handbook. This NPRM proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2022, edition date with a reference to the new edition date of April 1, 2023.

The changes made based on the 2023 edition of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules.

April 1, 2023, Changes

Nine changes in the 2023 edition of the CVSA handbook distinguish it from the April 1, 2022, edition:

1. Part I, Item 4.b.4 was revised by removing a section of the paragraph to provide more clarity to the OOSC, as this criterion was causing confusion for inspectors. Previously, inspectors interpreted Item 4.b.4 as a driver's operation of a property-carrying vehicle without a medical certificate or with an expired medical certificate. However, language was removed to make clear that an OOS violation exists if a driver operates a property-carrying vehicle without a valid medical certificate, either in the driver's possession or on file with the State driver licensing agency, and has a history of either failing to produce a medical certificate or having an expired medical certificate. The change is intended to ensure clarity in the presentation of the OOS conditions and is not

expected to affect the number of OOS violations cited during Level VI inspections in the United States.

2. Part I, Item 7.b, was amended to clarify that if evidence of a driver's use of a drug or other controlled substance within the previous 24 hours is noted by the inspector, then the driver is considered to be under the influence with probable cause and shall be declared out of service for 24 consecutive hours. This clarifies the previous OOSC language specifying that drivers must not be under the influence of drugs or any other substances at the time of the inspection. A note has been added to the section to define the term *driver's use*, which covers instances where drivers have acknowledged using drugs or other substances or where an inspector has directly observed such use within the previous 24 hours. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

3. Part I, Items 9, 10, and 11 were amended to provide clear guidance on when a driver should be declared OOS for false record of duty status (RODS). CVSA added language that clarifies that a false RODS violation does not present an "imminent hazard" if the falsification occurred on a previous date and the driver had an intervening confirmed qualifying rest period. In addition, footnote 2 was relocated as a note in the applicable U.S., Canadian, and Mexican OOS sections to assist inspectors in identifying the OOS criterion. Furthermore, the footnotes in these sections were reorganized, and the outdated "Removed and Reserved" footnotes deleted. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

4. Part I, Item 9, was amended to clarify footnote 10 concerning when to consider a driver OOS for not being able to print or sign their RODS. CVSA determined that, as the prevalence of digital documents and credentials in the Federal Motor Carrier Safety

Regulations (FMCSRs) increases, electronic versions of those documents and credentials will replace paper copies. Therefore, a driver will not be placed OOS for not having a physical RODS, provided that their hours of service can be verified on an electronic display, as the absence of a physical RODS alone does not present an imminent hazard. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

5. Part II, Item a.6.d, Item a.7.e, Item b.3.e, and Item b.4.e were amended to clarify the severity of rust required on a brake rotor to be included in the 20 percent brake criterion. The 20 percent criterion relates to the number of brakes on the vehicle or combination and the number of those brakes that are found to be defective during an inspection. Specifically, if 20 percent or more of the total number of brakes on the vehicle are found to be defective, the vehicle is considered OOS. With this update, CVSA added language to clarify that a brake can be considered defective only if rust is present on the entire surface of both sides of the rotor, rather than just a section. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

6. Part II, Item 2.e.3 and Item 2.f were amended to clarify that placement of tiedowns on cargo is not specified in the FMCSRs or National Safety Code (NSC) Standard 10. Section 393.110(b)(3) of the FMCSRs and NSC Standard 10 state that 2 tiedowns are required for articles exceeding a length of 10 feet (3.04 meters), and 1 additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length. The FMCSRs use the term “for” instead of “in” or “within,” implying a quantity requirement rather than a location specification. As a result, the note in the OOSC can be interpreted differently from the regulations.

Therefore, CVSA updated the OOSC to specify that the correct number of tiedowns, rather than their specific placement on the cargo, should be enforced. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

7. Part II, Item 9.a was amended to modify the title by adding "To Be On" to clarify the conditions under which certain lighting devices, including headlamps, tail lamps, stop lamps, turn signals, and lamp/flags on projecting loads, should be considered OOS. The previous language of "When lights are required" led some inspectors to believe that the vehicle is OOS when these lighting devices are not operating. However, the intention of the OOSC is to declare the vehicle OOS only when these lighting devices are required to be turned on. To avoid confusion, CVSA added the language "to be on" to the title, which will help clarify this OOS criterion. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

8. Part II, Item 11.d was amended to add language to clarify that spring hangers and equalizers are part of the vehicle's frame and axle when declaring the vehicle OOS. A vehicle is OOS if any part of a suspension connecting rod or tracking component assembly, including spring leaves that are used as a suspension connecting rod, or any part used to attach these components to the vehicle's frame or axle, such as spring hangers or equalizers, is cracked, loosened, broken, or missing. The addition was necessary as spring hangers and equalizers are considered part of the vehicle's frame or axle but, previously, were not specifically identified. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

9. Part II, Item 11.d was amended to add a diagram to aid inspectors in identifying the various parts of the suspension system during vehicle inspections for OOS violations. The suspension system contains numerous components and parts that may require inspectors to have other reference materials readily available to aid in the identification of the item(s). To simplify the identification process during inspections, CVSA supplemented the section with a diagram to enable inspectors to quickly identify those areas. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

VII. Severability

Congress authorized DOT by statute to promote safe transportation of hazardous materials in interstate commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures for inspections and safety permits for motor vehicles carrying certain hazardous materials. 49 U.S.C. 5105(d); 49 U.S.C. 5109. The purpose of this rule is to incorporate by reference the 2023 edition of the CVSA handbook outlining the out-of-service criteria and inspection procedures for commercial highway vehicles transporting RAMs. The provisions within the CVSA handbook are intended to operate holistically in addressing a range of issues necessary to ensure the safe transport of hazardous materials. However, FMCSA recognizes that certain provisions focus on unique topics. Therefore, FMCSA finds that the various provisions within the CVSA handbook would be severable and able to operate functionally if one or more provisions were rendered null or otherwise eliminated. The remaining provision or provisions within the handbook would continue to operate functionally if any one or more provisions were invalidated and any other provision(s) remained. In the event a court were to invalidate one or more of the CVSA handbook's

unique provisions, the remaining provisions should stand, thus allowing this congressionally mandated program to continue to operate.

VIII. Section-by-Section Analysis

Section 385.4 Matter incorporated by reference

Section 385.4(b)(1), as amended on December 22, 2022, references the April 1, 2022, edition of the CVSA handbook. This NPRM proposes to replace the reference to the April 1, 2022, edition date with a reference to the new edition date of April 1, 2023.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2022, edition to the April 1, 2023, edition of CVSA's handbook titled "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403." FMCSA reviewed its MCMIS data on inspections performed from 2019 to

2022 and does not expect the handbook updates to have any effect on the number of OOS violations cited during Level VI inspections. Therefore, the proposed rule's impact would be de minimis.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).⁴

C. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.)(RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,⁵ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies

⁴ A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

⁵ Pub. L. 104–121, 110 Stat. 857, (Mar. 29, 1996).

strive to lessen any adverse effects on these businesses. None of the updates from the 2023 edition impose new requirements or make substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to “prepare and make available an initial regulatory flexibility analysis” that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule would update an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and would incorporate by reference the April 1, 2023, edition of the CVSA handbook. The changes to the 2023 edition of the CVSA handbook from the 2022 edition are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2023 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections in the United States. Accordingly, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement

Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$192 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this

document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,⁶ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The proposed requirements in this rulemaking are covered by this CE.

List of Subjects in 49 CFR 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

⁶ Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385, as set forth below:

PART 385--SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901-13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; sec. 350, Pub. L. 107-87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114-94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

2. Amend § 385.4 by revising paragraph (b)(1) to read as follows:

§ 385.4 Matter incorporated by reference.

* * * * *

(b) * * *

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,” April 1, 2023, incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.

[FR Doc. 2023-15412 Filed: 7/21/2023 8:45 am; Publication Date: 7/24/2023]